

(1928) 01 MAD CK 0041

Madras High Court

Case No: None

K. Ramankutty Menon
and Others

APPELLANT

Vs

Beevi Umma and
Others

RESPONDENT

Date of Decision: Jan. 5, 1928

Citation: AIR 1929 Mad 266

Hon'ble Judges: Phillips, J; Odgers, J

Bench: Full Bench

Judgement

Phillips, J.

In this suit for redemption the plaintiffs" who are the junior members of a tarwad sue on the strength of a. karar executed in their favour by defendant,?, the karnavan. Their right to sue was; questioned at the trial and the District Munsif found that the karar amounted to a renunciation of the karnavasthanam by defendant 7, but did not invest the plaintiffs with authority to bring this suit.. The Subordinate Judge in the appeal says:

I agree with the lower Court and hold that Ex. BB is a document of renunciation by the karnavan of all his rights in favour of the plaintiffs,

but, notwithstanding this finding has dismissed the plaintiffs" suit on the ground that they were not entitled to sue.. The question, therefore, that arises in second appeal is the construction of the karar, Ex. BB. It is a long document and begins by reciting the fact that defendant 7, the karnavan had on two previous occasions entrusted other persons-with the management of the tarwad affairs but as such management was unsatisfactory he had resumed management, himself. It then recites that as he is ill and wishes to get rid of the trouble of management he entrusts all affairs of management to the two plaintiffs who are anandravans of his tarwad. In para. 4 there is a recital that the karnavan has surrendered his right of management for the consideration of Rs. 500 and future maintenance during his lifetime" and at the end of the paragraph there is a recital that

defendant 7 has no right either to invalidate the karar or to enter upon the management again. In para. 5 details of the powers conferred upon the plaintiffs are set out and finally we have the following words:

You have full power either both of you jointly or one of you singly as the representatives of myself the karnavan to present yourselves, and to carry out all such kinds of business which in the capacity of the karnavan of the tarwad I am bound to carry out,

and the paragraph concludes:

All such acts that are done will be binding on me, on the tarwad and on the properties.

2. The clear intention of defendant 7 in executing the document is to relinquish his powers of management and to confer them upon the plaintiffs for the consideration of Rs. 500 and future maintenance. The question is whether such an arrangement is valid. The District Munsif has divided the document into two parts and says Ex. BB is partly legal and partly illegal. He holds that the renunciation of the karnavasthanam is legal, but that the delegation of power to the plaintiffs is illegal, and instead of treating the document as one whole he accepts the legal part, namely, that of renunciation and holds that the remaining part alone is invalid. The Subordinate Judge agrees but does not purport to divide up the document, the gist of which he holds to be in accordance with what I have said above. It was held in *Kenath Puthen Vittil Thavazhi v. Narayanan* [1905] 28 Mad. 182 that a karnavan has power of renunciation and the opinion of the Full Bench is given at p. 196:

we are therefore of opinion that it is open to the karnavan of a tarwad to renounce his karnavanship including his right to manage the tarward affairs.

3. A unilateral renunciation is undoubtedly sufficient but it must be an unconditional renunciation including the recognition of the senior anandarvan's succession to the karnavasthanam. When as here it is coupled with a delegation to certain persons who are not entitled to the karnavasthanam it appears to me that it does not amount to a complete renunciation of the karnavasthanam for the renunciation is subject to certain conditions. The provision of a payment of Rs. 500 and future maintenance is one of the conditions on which the karnavasthanam is renounced. Another condition is that the two plaintiffs shall succeed to the karnavan's rights and the recital in para. 5 that the plaintiffs are to act "as the representatives of myself, the karnavan" shows that defendant 7 was not giving up all his rights but intended to retain the status of karnavan while relinquishing his powers of management. The document cannot therefore be treated as an out and out renunciation, for that was clearly not the intention of defendant 7. It cannot therefore be held that after the execution of Ex. BB the senior anandarvan has become karnavan. Treating, then, the document as a delegation of powers in plaintiffs' favour, it must be held to be invalid. In *Chappan Nayar v. Assen Kutti* [1889] 12 Mad. 219 delegation of powers during the karnavan's imprisonment was held to be void. In that case the delegate was a stranger to

the tarward but that can make no difference in principle, for the karnavan has no right to say who shall conduct the tarward affairs in his place as that right is vested in the senior anandravan. I must hold therefore that Ex. BB does not amount to an absolute renunciation and is invalid as a delegation in plaintiffs" favour.

4. Defendant 7 being a party to this suit, asks in his written statement to be joined as a plaintiff in case the karar is held to be invalid as he is willing to redeem the suit properties. He has also joined the plaintiffs both in the first appeal and in the appeal to this Court. He should therefore now be added as a plaintiff and the trial on the other issues in. the suit proceeded with. For this purpose the suit is remanded for further disposal to the District Munsif of Wulluvanad. Costs of this appeal will abide the result. Court-fee in this Court will be refunded.

Odgers, J.

5. I agree. The question is what is the proper construction of the karar Ex. BB. The provisions of the document have been set out in the judgment of my learned brother and it is unnecessary for me to repeat them. They clearly show not only a conditional renunciation on the part of defendant 7, but a renunciation in favour of the plaintiffs, that is, strangers as far as the karnavasthanam is concerned, for they are not the nearest anandravans. There is in my opinion no ground for the contention that the document should be divided and one part held to be valid and the other invalid. The document is one and entire and relates throughout to the same subject-matter. All parts of it must therefore be read together. If that is so, the provisions exhibit the effect in law indicated above.